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The Horrible Sepulture of Mannes Resoun: Intoxication and Medieval English Felony Law

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Abstract

The modern Anglo-American common law tends toward a hardline stance on intoxication, typically not treating it as an excuse to a criminal charge but offering a few well-guarded exceptions, most notably the idea in some jurisdictions that intoxication may be invoked to negate specific intent given its deleterious effect on cognitive capacity. A similar ambivalence toward the intersection of intoxication and criminal responsibility may be found in early English felony law, which offered no formal, intoxication-based exceptions to liability, but nevertheless countenanced jurors exercising their prudential judgment to treat intoxication as either an inculpatory or exculpatory factor in particular cases. Medieval English felony law treated drunkenness similarly to anger, recognizing that both conditions – which could be intertwined – often traced their roots to condemnable character formation and long-cultivated habit, and yet could result in a person's detachment from their capacity to reason and exercise self-control while under the influence. In the legal context, drunkenness was not equated with insanity, which was presumptively exculpatory, despite the fact that the two conditions could result in similar effects on a defendant's observable behavior. Evidence from non-legal texts, including vernacular literature and guides for confessors, helps explain the concerns medieval English judges and jurors brought with them to the task of felony adjudication when faced with alcohol-laced facts, revealing a world in which tavern culture ensured alcohol's omnipresence, but in which drunkenness was nevertheless not generally available as an excuse, partial or otherwise, for allegedly felonious behavior.

Keywords: intoxication, felony, medieval England

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The Horrible Sepulture of Mannes Resoun: Intoxication and Medieval English Felony Law*

> This synne hath manye speces. The firste is dronkenesse, that is the horrible sepulture of mannes resoun; and therfore whan a man is dronken he hath lost his resoun, and this is deedly synne.
>
> – Chaucer, *The Parson's Tale*[1]

On a late February night in 1272 in the Bedfordshire village of Bromham, four men departed Robert Malin's tavern. Making their way down the road, they met the local vicar, Ralph son of Ralph, as he entered the road opposite the Bromham church. Under a waning crescent moon, the encounter may have been shrouded in darkness.[2] An inquest narrative, surviving in the rolls of a local coroner, fails to explain why Ralph was outside the churchyard late at night, but it does record a brief exchange: one of the men, Robert Bernard, asked Ralph who he was, to which the vicar answered, »a man, who are you?«[3] Robert was not amused by Ralph's cheeky response. The inquest narrative recounts that Robert, »because he was drunk (*eo quod ebrius fuit*), sprang forward and struck Ralph across the crown of the head with a ›spart‹ axe«, issuing a fatal wound.[4] Ralph immediately lost his capacity to speak and died by the following midday.

An inquest was held by the coroner with jurors from four local villages. Those representing Bromham blamed Robert Bernard alone for the death but said that the other three men had been with Robert at the tavern that evening. The representatives of three other villages took matters a step further: while conceding that Robert was the only one to strike Ralph, they also indicated that the other men »consented to do any other misdeed and were waiting to do injury to someone else there.«[5] An order was issued to arrest all four men. The tavern host, Robert Malin, found pledges, presumably to secure his appearance later, as did a companion of the ill-fated Ralph, who fled in fear after the event. The incident, to which we will return later, raises several questions. Was this a chance encounter, or had Robert Bernard and his companions deliberately ambushed the vicar? Was Robert Malin's tavern the site of conspiratorial plotting to attack Ralph or perhaps another individual?

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1 Benson (ed.) (1987) 316 (Canterbury Tales, The Parson's Tale, X(I).821).

2 The incident occurred on a Thursday in the feast of St. Mathias the Apostle, i. e., 24 February. In 1272, the moon was in its last quarter on 23 February, and there was a new moon on 1 March. See https://moon.nasa.gov/moon-in-motion/moon-phases/ and http://astropixels.com/ephemeris/phasescat/phases1201.html (last accessed 4 May 2022). My thanks to Gerald Neuman.

3 The details of the case are recorded in Hunnisett (ed. and trans.) (1961) 55, no. 123. The original entry in the coroner's roll may be viewed at TNA JUST2/1, m. 7, AALT no. 0019, (1272), http://aalt.law.uh.edu/AALT7/JUST2/JUST2no1/aJUST2no1fronts/IMG_0019.htm (incipit »Contigit in villa de Bromham …«, last accessed 3 March 2022).

4 Hunnisett (ed. and trans.) (1961) 55.

5 Hunnisett (ed. and trans.) (1961) 55.

Robert Bernard, after all, was carrying an axe that evening, which could be indicative of premeditation. Would the fact of Robert Bernard's drunkenness, which was specifically highlighted in the narrative produced by the coroner's inquest, have aggravated or mitigated his culpability in striking Ralph? At the heart of all these questions is a fundamental mystery about the treatment of intoxication in the early English common law of felony: did intoxication matter in adjudicating felony cases? Did it inculpate, exculpate, or both (or, for that matter, neither)? While not definitively solving that mystery, this article attempts to shine light on a topic nearly as dark as the road on which Ralph met a violent end at the hands of an intoxicated aggressor. It is intended to lay the groundwork for further exploration of the role of intoxication in the adjudication of felony cases in thirteenth- and fourteenth-century England by myself and others.

Modern American criminal law, which I teach to first-year law students, exhibits great ambivalence toward the issue of intoxication. The U.S. Supreme Court has declared that there is no constitutional right to introduce evidence of voluntary intoxication to negate the mens rea necessary to commit a crime.[6] Some U.S. jurisdictions permit the introduction of evidence of intoxication in order to negate specific intent, such as the heightened mens rea required for first-degree murder.[7] In that sense, intoxication can be partially exculpatory. It can also be an aggravator: in some jurisdictions, when a criminal statute requires a mental state of recklessness, an intoxicated actor will be presumed to have acted recklessly even if evidence suggests the individual was not actually aware of the risks involved due to their inebriation.[8] Perhaps because it can push in opposite directions, intoxication is seldom listed explicitly in sentencing guidelines but may fall within the bounds of »catch-all« provisions that permit the consideration of various mitigating factors.[9] Remarkably, while courts routinely grapple with the admissibility of intoxication evidence, there tends to be little explicit case law on the issue.[10] This ambivalent treatment of intoxication in modern U.S. law may be attributable to a variety of factors, including the challenges of measuring the level of impairment experienced by a defendant – particularly when the intoxicating substance is one for which there is no simple breath test or the like – and a desire to deter excessive substance use, particularly with regard to impaired driving. The matter is further complicated by the fact that some individuals *do* lose their capacity to reason effectively once intoxicated, suggesting that they might not be able to fully exercise their volitional and rational capacities in the moment, and by the problem of addiction, which might gravely impair a person's capacity to choose freely whether to ingest the substance in question in the first place.

Such ambivalence may also be found in medieval English texts, although the manifestation is contextually quite different. On the one hand, legal records exhibit reliance on intoxication in some instances to explain the circumstances behind a homicide and occasionally to condemn the behavior of an intoxicated actor. The coroner's inquest investigating Ralph's death, for example, attributed Robert Bernard's homicidal attack to his drunkenness, although admittedly there remains ambiguity in the inquest's statement that Robert struck Ralph »because he was drunk« – was this inculpatory or exculpatory? In other instances, men killed by self-defenders were described as having attacked the self-defender while in a state of drunkenness; the deceased's condemnable intoxicated behavior could help justify the self-defender's lethal response. On the other hand, accidental deaths precipitated by drunkenness – a fall from a horse while riding home more than tipsy from a tavern, a fire started by a bedside candle left unattended by a drunken person – were treated like any other misadventure, with no property forfeitures or other negative consequences for the deceased or their families. What conclusions might be drawn from such scattershot and sometimes contradictory evidence?

The most glaring evidence concerning drunkenness, however, is the fact that it is so often ab-

6 *Montana v. Egelhoff*, 518 U.S. 37 (1996).
7 Marlowe et al. (1999) 199.
8 Marlowe et al. (1999) 199.
9 Marlowe et al. (1999) 203.
10 Marlowe et al. (1999) 203.

sent from the plea rolls documenting medieval English felony trials. In fact, the relative paucity of head-on discussions of intoxication in the legal record is *itself* worthy of exploration. As in the case of Robert and Ralph, drunkenness was sometimes highlighted in the narratives recorded in the wake of a coroner's inquest. In cases of homicide, such inquests were geared toward setting out the circumstantial facts that might help rule out felony or assist a later trial jury in reaching a reasoned verdict, and drunkenness was a probative circumstance.[11] They typically covered the *quis*, *quid*, *ubi* – the who, what, where – and other circumstances surrounding an unnatural death, such as the fact that a fatal altercation transpired outside a tavern shortly after curfew, as men, and occasionally women, were wending their ways home. Trial records, on the other hand, seldom reveal precisely how intoxication factored into a jury's ultimate decision-making process. This, I argue, is due to the fact that the common law largely remained silent on the issue of intoxication, leaving the »rules« of how to treat the issue up to jury discretion; by comparison, while juries also exercised discretion in determining whether a defendant had acted in self-defense or in a state of insanity, the common law defined the bounds of these issues crisply and categorically. In these areas of law, we can discern the rules by examining the rationale provided in the jury's verdict: the self-defender could run no further and was in fear of his life, or the insane person had been ill for a lengthy period and was in an acute phase of her illness at the time she committed an alleged felony. Because they served as explicit grounds for seeking a pardon *de cursu*, as a matter of right, from the crown, insanity and self-defense appear comparatively frequently in coroners' rolls and trial records alike. To the extent that intoxication entered into the circumstantial calculations of jurors tasked with determining a defendant's guilt or innocence, it often did so without leaving a significant trace – sometimes only a faint smell of alcohol through reference to a tavern setting or an evening spent drinking with companions – on the historical record.

If the trial records are largely silent on the matter, is there a history to be told about the treatment of intoxication in medieval English felony cases? Must historians be resigned to picking up the story of intoxication's place in felony law only in the sixteenth century, when common-law commentators begin to expound on the subject, and when *Reniger v. Fogossa*, a case about an ill-fated shipment of woad, gives us a dictum that will live on in *Plowden's Reports* and then in case law for centuries to come?[12] The answer to this second question, from my perspective, is emphatically no, or else I would not be writing this article as a précis to a lengthier treatment of the topic. There *is* a history to be told about the treatment of intoxication in felony cases in the first two centuries of the medieval English trial jury. It is a complicated story and an important one, insofar as it contributes to our picture of medieval English conceptions of intentionality, capacity, and responsibility in the common-law tradition of jury trial for felony, as well as our own understanding of the discretion wielded by medieval English juries in defining the bounds of criminal responsibility through fact-intensive prudential decision-making. It is a story that cannot be told through an entirely internalist exploration of plea rolls, law reports, and statutes. Rather, it is a history that requires an expanded legal-historical toolkit, a toolkit as equipped with hortatory texts as with legal records, with literary tales as with law reports. And it is a history that

11 This was true beyond England, too. See, e. g., the instructions for a coroner's inquest in Waterford, Ireland, circa 1300, which included the following guidance for investigating a suspicious death: »And if the inquest says that such a one is guilty and that they know none other guilty but him only, the bailiffs must inquire, as of their office, how and in what way he is guilty, as in defending himself, or in play, or in hate or rage or drunkenness, or through ill-will between them, or by the incitement of another, whereby the dead man was further from life and nearer to death, and whether he who is dead might have escaped if he had chosen.« Bateson (ed. and trans.) (1904) 14–15.

12 The 1551 case of *Reniger v. Fogossa*, which dealt with the matter of woad lost at sea, observed in dictum: »a Person that is drunk kills another, this shall be Felony, and he shall be hanged for it, and yet he did it through Ignorance, for when he was drunk, he had no Understanding nor Memory; but inasmuch as that Ignorance was occasioned by his own Act and Folly, and he might have avoided it, he shall not be priviledged thereby«. *Reniger v. Fogossa* (1551), in Plowden (1816) 19. My thanks to Ama Doyal.

draws upon concrete but scattered textual evidence in the service of informed speculation about the legal-historical past.

While the method may yield results that at times evoke the drunkard's walk more than the straight shot of a sober archer, even such unsatisfactory findings relay some insight into the treatment of intoxication in the first two centuries of the English criminal trial jury. The findings also stand in stark contrast to the clear pronouncements made by sixteenth- and seventeenth-century common-law authors, from Coke to Hale and beyond, who explicitly condemned the vice of drunkenness as an exacerbator of criminal culpability. What emerges is a shift from a medieval English world in which such condemnations of intoxication were the purview of theologians and pastoral authors, to an early modern world in which legal treatise authors railed against drunken misbehavior, too. Just as we might doubt that religious scruples always guided the judgments of medieval English jurors, we might ask whether there was some disparity between the treatment of intoxication in early modern legal treatises and law reports and the handling of the issue by judges and jurors staring defendants in the face.[13] These are questions, however, beyond the scope of this article.

1 Methodology

While there have been earlier treatments of the history of intoxication in criminal law, none have focused squarely on the early centuries of the criminal trial jury in England.[14] Studying the treatment of intoxication in medieval English felony law has many barriers: there are no statutes addressing the issue, like the Jacobean statute of 1606, which outlined a crime of drunkenness and prescribed punishments and processes for dealing with alleged offenders; there are neither lengthy treatments of the topic of intoxication in the surviving trial records nor instructions from judges to jurors telling them how to weigh the issue of intoxication when reaching a verdict; and there is evidence of great ambivalence in the legal record and in literary and theological treatments of intoxication, making it difficult to intuit from such sources the attitudes jurors would have brought with them to the task of judging their neighbors.

Despite these obstacles, this paper takes a modest first step toward understanding thirteenth- and fourteenth-century English approaches to dealing with drunkenness in felony cases, relying on coroners' rolls and plea rolls – records of trials at eyres and gaol delivery sessions – as well as other evidence of cultural attitudes toward intoxication during these crucial first two centuries of the criminal trial jury.[15] This choice of methodology – reading widely in legal records and literary and religious texts – is driven by the fact that the terse records of the king's courts, taken on their own, do not offer sufficient insight into the motivations of the medieval English jury in deciding upon the guilt or innocence of those haled before them. To understand what ideas jurors brought with them to the task of reaching a verdict, one has to seek out broader evidence of cultural mores.

This article will begin with the excavation of legal texts, including the mention of intoxication in coroners' rolls, which often leave us in the dark about the eventual outcome of a case, and in trial records, which only rarely treat the issue directly.

13 See, e. g., Rabin (2004) 78–85 (illuminating the disparities between legal treatises' zero-tolerance discussions of intoxication and the openness of judges and juries to claims of »simple drunkenness« made by sympathetic defendants).

14 See, e. g., Mittermaier (1840); Singh (1933); Hall (1944); Keiter (1997); McAuley (1997). I limit my inquiry here to felony cases, but there remains further work to be done in other areas of law as well. For an impressive contribution focused on contracts, see Swain (2020).

15 In my 2019 book on mens rea in medieval England, I touched briefly on the issue of drunkenness but did not devote any lengthy discussion to the issue given the relative paucity of evidence I encountered on the topic while reading broadly and deeply in the records of the royal courts. See Kamali (2019) 108, 123, 139, n. 75; 160–161, 307. In the years since, I have continued to gather evidence of discussions of intoxication – often fleeting, frequently ambiguous – in felony records. Any given run of records might have a few, or one, or no references to the topic, impeding any attempt at a numerical analysis of the frequency with which intoxication factored into jury decision-making. Some attempts at statistical analysis have been undertaken in the past, and surely more work of that kind remains to be done. See, e. g., Hanawalt (1976b) 312.

Next, the article will examine other kinds of textual evidence, including religious texts and other literary sources that illuminate the extent to which religious ideas informed perspectives on the ground. This task is admittedly complicated by an issue like intoxication, where there is always the possibility of a disconnect between expectations conveyed by judges and by the common law itself, with its failure to address intoxication head-on, and the lived experience of jurors. After all, alcohol consumption was quotidian and also, when engaged in to greater excess, sometimes intimately connected with major life events and celebrations. Furthermore, there is the possibility of tension between that same lived experience and the religious condemnation of excess alcohol consumption as a form of gluttony, a cardinal sin known to lead down an inexorable path toward further sin and crime, death and destruction. There was also a kernel of truth to priestly preaching against overindulgence, as jurors who had witnessed a tavern brawl or seen a neighbor squander his earnings on ale and gambling could attest.

To say there may be disconnects is not to suggest that the enterprise is hopeless. As I have argued elsewhere, ideas about mens rea were in wide circulation in medieval England, both in religious texts, such as sermons and guides for confessors, and in literary works in Latin and the English and French vernaculars.[16] This is true for ideas about intoxication, too. While many jurors were no doubt illiterate, medieval England's largely oral culture facilitated the dissemination of ideas, some of which appear in a diverse range of registers, from elite to more popular literary forms.[17] What emerges from an interdisciplinary analysis of legal and extralegal texts is a complicated picture of medieval English understandings of the interplay between intoxication and criminal responsibility, suggesting that the present conflicted state of the law has deep roots in as well as sharp discontinuities with the common-law past.[18] Particular attention will be paid to the conceptual intersection between intoxication and two other mental or emotional states that appear in medieval English sources: insanity, which was presumptively exculpatory, and anger, which could push in inculpatory or exculpatory directions depending upon the circumstances.

2 Intoxication in Medieval English Legal Records

Alcohol intoxication would appear to be referenced both everywhere and almost nowhere in the medieval English plea rolls. Scribes were tasked with compressing the vernacular testimony of witnesses and the conclusions of coroners and jurors at an inquest or during a trial into formulaic, abbreviated Latin. In doing so, they often alluded to occasions of drinking – typically in taverns at night – but only sporadically used the words and phrases – *ebrius*, *per ebrietatem*, etc. – that signal clearly to the historian that inebriation and not simply benign social drinking was at play.[19] In her study of violent death in fourteenth- and early fifteenth-century Northamptonshire, London, and Oxford, Barbara Hanawalt made the following observations: »In both rural and urban society the traceable influence of drink is very low. The drunken brawl figured in only 4.3 percent of the rural homicides and in 6 percent of the urban ones. The tavern was the scene of a murder in only 7 percent of the cases in both.«[20] Hanawalt acknowledges that these figures might fail to capture the full extent of alcohol's influence on homicide fact patterns. »Probably many more of the arguments involved people who had been drinking,« Hanawalt speculates, »but the evidence from which to make an estimate on the role of alcohol in homicide is not available.«[21] It was not unusual

16 See, e. g., Kamali (2019) 11.
17 See Kamali (2019) 12–13.
18 On the present state of the law, see, e. g., Keiter (1997); Ingle (2002).
19 Some words may have offered a stronger signal than we are aware of today. While *potus*, the base of the verb *poto, potare*, can simply refer to a drink or an act of drinking, in classical Latin to say one was »*bene potus*« meant that they were drunk. *Dictionary of Medieval Latin from British Sources* (hereafter »*DMLBS*«), *s. v.* »potus«; *Basiswoordenlijst Latijn (BWL)*, *s. v.* »potus«. While »*crapula*« could mean drunk, it also signified the after-effects of overeating. See *DMLBS*, *s. v.* »crapula«. Interpreting words like these is complicated by the tendency, even today, to employ euphemism when describing someone as drunk.
20 Hanawalt (1976b) 312.
21 Hanawalt (1976b) 312.

for homicides to occur inside or outside taverns shortly after locally mandated curfews, giving rise to the natural suspicion that intoxication might have been a factor in some of these lethal brawls.[22] The fact that the plea rolls only rarely mention drunkenness explicitly does not necessarily mean that inebriation was not involved, but might point to a reluctance to rely on it as either inculpatory or exculpatory evidence, perhaps especially when both parties to a felony – victim and perpetrator – were intoxicated. In some instances, local communities might have felt conflicted about how to respond to a death or homicide involving some measure of intoxication. Sympathy could have been in order under some circumstances, less so in others. In the paragraphs to follow, I trace a few examples of alcohol intoxication in cases of accidental death and homicides committed in self-defense, two of the contexts in which references to drinking and drunkenness most often appear. I then address the combination of alcohol consumption and group misbehavior before turning, in the next section, to a discussion of the cultural underpinnings of this issue.

2.1 Alcohol and Accidental Death

In thinking about deaths classified as accident or misadventure, it is crucial to distinguish between pure *infortunium*, an accidental death with no human agent other than the deceased (e. g. a fall from a height, drowning), and accidental homicide, when a person killed another in circumstances we might describe as negligent or even reckless today. Drunkenness is explicitly mentioned in some cases resulting in a finding of misadventure based on pure *infortunium*, and the evidence points to an unwillingness to impugn the deceased's memory even when the antecedent drinking was freely undertaken. Where another human actor was involved, such as a death resulting from a fall onto an outstretched knife during a tavern brawl, jurors will still sometimes classify such a death as misadventure, avoiding the possibility of a felony conviction, with all its serious consequences, for the knife wielder. We might, of course, wonder whether there was some creative narrative construction at work in such cases.[23] Whether truth or fiction or something in between, in coroners' rolls and trial records alike, drunken accidents tend to be presented matter-of-factly, without any explicit moral judgment, and they result in a verdict of misadventure, as opposed to a finding of either felonious homicide (when someone else was involved) or suicide (when no other individuals were involved). I turn now to a few illustrative examples.

When Simon of Coughton, through drunkenness (*per ebrietatem*), fell dead from his horse in the village of Alcester, a local jury classified the death as misadventure at the 1221 Warwickshire eyre, treating the incident no differently than a sober fall from a horse.[24] The villages of Alcester and Coughton were fined, however, for failing to present the death to the coroner and for burying the body without a coroner's viewing, respectively, suggesting a fear of further inquiry into the facts of the death. The community might have been attempting to safeguard the reputation of the deceased, a man of some local prominence.[25]

22 Localities often regulated tavern hours, imposing a mandatory curfew. In late medieval London, 90 percent of homicidal attacks occurred after nightfall, »with a peak … at the hour of curfew«. Hanawalt (1976b) 305. On the commonality of homicides following an evening in the tavern, see Bolland et al. (eds.) (1912) lxxxvii–lxxxviii. Examples abound in the coroners' and plea rolls, and I provide here a small sampling. For a fight arising at a tavern and resulting in an allegedly felonious homicide, see, e. g., TNA JUST2/17, m. 4, AALT no. 0012, (1336), http://aalt.law.uh.edu/AALT7/JUST2/JUST2no17/aJUST2no17fronts/IMG_0012.htm (*incipit* »Accidit in villa de Lyntone Magna …«, last accessed 3 March 2022); TNA JUST2/18, m. 4, AALT no. 0146 (1351/2), http://aalt.law.uh.edu/AALT7/JUST2/JUST2no18/aJUST2no18fronts/IMG_0146.htm (*incipit* »Accidit apud Crippelowe die dominica …«, last accessed 3 March 2022). See also, e. g., Clanchy (ed. and trans.) (1973) 324, no. 808; Harding (ed. and trans.) (1981) 225–226, no. 600; Sharpe (ed.) (1913) 203–204 (Roll G, no. 3).

23 See, generally, Green (1985); Davis (1987).

24 Stenton (ed. and trans.) (1940) 344–345, no. 762. For another example of a drunk man falling to his death, which was later classified as misadventure, see TNA JUST2/4, m. 4 (of continuous roll), AALT no. 0098 (1276), http://aalt.law.uh.edu/AALT7/JUST2/JUST2no4/IMG_0098.htm (*incipit* »Contigit in villa de Helnestone …«, last accessed 3 March 2022). And for the case of a woman who died after breaking her tibia in a drunken fall outside St. Martin le Grand in London, see Sharpe (ed.) (1900) 265.

25 Simon appears to have inherited the manor of Coughton. See Styles (ed.) (1945) 80.

Significantly, Simon had been accompanied by his son, also named Simon, and it could be that the village was trying to protect the younger Simon against a possible accusation of felony, particularly given the fact that he does not appear to have raised the hue and cry.[26] The horse was treated as deodand, valued at one mark.[27] This suggests that the horse was nominally marked as the instrument of death, rather than placing blame directly upon the elder Simon for causing his own demise. This was similarly the case with two deaths treated at the 1275 Worcester eyre: both the vessel of hot water into which the drunken (*ebrietate*) William Dewy fell and the beam at the Pershore watermill from which the intoxicated Adam of Defford tumbled were valued as deodands when the deaths were classified as misadventure.[28]

A late thirteenth-century case, similarly treated as misadventure, involved the death of Margery, wife of Adam Golde.[29] A coroner's inquest determined that Margery and Adam had, on the preceding Friday, gotten drunk at a tavern and then returned home to bed. Margery lit a candle and left it burning as she drifted off to sleep, with disastrous consequences: her straw bedding caught fire. She died a day later after having received last rites, and Adam barely managed to survive, having been burned to the bone on his hands and feet. The jury was asked whether Adam could have liberated Margery from the fire so that she might have survived, and they answered in the negative. Margery's death was determined to be a case of *infortunium*, an accident, despite the couple's voluntary intoxication. In the interrogation of Adam, we see a need for further inquiry when another person was involved in or proximate to an accidental death. This was all the more true when death resulted from a stab wound. A larger-than-usual inquest of twenty-six men was assembled to inquire into the death of John de Markeby in London in 1339.[30] The inquest determined that John, while drunk, accidentally wounded himself by jumping about with his knife hanging at his girdle, self-inflicting a mortal wound above his knee. The inquest's narrative thereby removed any possible suspicion from John's daughter and a servant who were both in the house at the time.

Even when circumstantial evidence pointed toward violence fueled by drink, a jury might, in some instances, be inclined to classify a death as accidental. In a Yorkshire homicide case circa 1309, the plea roll describes a nocturnal gathering of guildsmen in a home in the village of Nortone.[31] The guildsmen specifically came to the house »to drink together« (*ad simul potandum*). The accused and the deceased, William Calf and John son of Thomas of Nortone, respectively, arrived at the house and were drinking when »contumelia arose« (*mota fuit contumelia*) between William and a man identified as Henry son of Agnes. Notably, the plea roll relates that William took out his knife to defend himself against Henry, who was attacking William and John. Others tried to intervene, »hoping to pacify that contumelia« (*illam contumeliam pacificare volentes*). William eventually fell to the ground, and John, pressed by the crowd of men, fell on top of William and his extended knife, thus receiving a fatal wound.[32] The narrative portrays William and John as companions, facing an attack from Henry, thereby suggesting the implausibility of William having intentionally taken John's life. Queuing up a narrative fit for a pardon, the plea roll specifies »that the aforesaid John son of Thomas was killed by misadventure and not by any

26 On the practice of raising the hue and cry, see Duggan (2017).

27 Stenton (ed. and trans.) (1940) 345.

28 Röhrkasten (ed.) (2008) 396, no. 838 (William Dewy). The vessel was valued at three shillings as deodand. Röhrkasten (ed.) (2008) 409, no. 875 (Adam of Defford). The jurors were fined for concealing the deodand (i. e., the beam, valued at four pence) in their verdict.

29 TNA JUST2/128, m. 1, AALT no. 0004 (1297), http://aalt.law.uh.edu/AALT7/JUST2/JUST2no128/IMG_0004.htm (*incipit* »Contigit die Sabati proxima ante festum Nativitatis sancti Johanni Baptisti …«, last accessed 3 March 2022). For a similar case of a drunken woman burning to death after leaving a candle lit by her bedside, see TNA JUST2/128, m. 1v, AALT no. 0006 (1298), http://aalt.law.uh.edu/aalt7/just2/just2no128/img_0006.htm (second entry on folium, last accessed 3 March 2022). And for an intoxicated man meeting a like fate in London circa 1275–1276, see Sharpe (ed.) (1900) 261.

30 Sharpe (ed.) (1913) 231 (Roll G, no. 40).

31 TNA JUST3/74/3, m. 14, AALT no. 0103 (1309/10), http://aalt.law.uh.edu/AALT7/JUST3/JUST3no74_3/IMG_0103.htm (*incipit* »Willelmus Calf de Waletone indictatus …«, last accessed 3 March 2022). For an outbreak of violence at another large gathering within a home in London in 1276, see Sharpe (ed.) (1900) 263–164. In this instance, the record does not describe the killing as accidental.

32 On cases of self-defense being transformed into accidental deaths due to fact patterns like this one, see Green (1985) 90.

felony or malice aforethought of the aforesaid William«.[33] As a result, William was remanded to gaol to await the king's pardon, which would have been granted as a matter of course (*de cursu*), insofar as pardons were issued routinely by the early thirteenth century in cases of self-defense, accident, and insanity.[34] Although all the men involved appear to have been drinking, the intervening force of the crowd pressing in, the absence of antagonism between William and John, plus the victim's allegedly accidental fall onto the defendant's outstretched knife, combined to create a fact pattern that could be treated by a jury as misadventure rather than felonious homicide.

To take one final, to my mind puzzling, example, an inquest was summoned in 1254 to inquire into the death of William of Yerdelegh (likely Yardley, Northants.), a carter. The inquest determined that Robert son of Robert de Olneye and others had been drunkenly singing (*ebrii cantantes*) when William de Yerdelegh came along in his cart, similarly drunk, and collided with the singers.[35] Robert ran after William and struck him on the head with a hatchet; William died at his father's home more than two weeks later. Remarkably, the jury concluded that Robert had not struck William feloniously or out of malice prepense given the fact that the men were strangers to each other, and the death – though precipitated by a hatchet blow to the head – was determined to have been a misadventure. Drunken street revelers, a drunken carter, a drunk-driving collision, and a hot-headed hatchet blow, all added up to an accidental death in the eyes of this particular inquest.

In short, whether an untended candle or a fall onto an outstretched knife provided the proximate cause for a drunken death, the factor of inebriation appears to have been set aside by jurors who were willing to classify such deaths as accidental rather than holding the deceased or their companions accountable for deliberately imbibing to excess.[36] In some instances, the absence of an interceding act of aggression could have made all the difference. In others, the contributory negligence of the victim, such as John's alleged stumbling onto William's outstretched knife or (the other) William's drunk cart-driving, might have inclined a jury to classify a death as accidental.

Admittedly, it is difficult to imagine an alternative to treating the pure *infortunium* variety of drunken accidents – e. g. Simon's fall from his horse – as excusable misadventures: perhaps the common law could have categorized some such incidents akin to *felonia de se*, deliberate suicide, transferring the sinful intent to drink excessively to the later accidental act or omission resulting in the intoxicated individual's death. This would have required comfort with a highly attenuated chain of causation, looking for mens rea in a preceding act – the decision to drink – and pairing it with a later actus reus – the physical cause of death.[37] Rather than collapsing the causal and temporal chain of events, the common law leaned toward leniency in cases of accidents resulting from drunkenness. This might be done to remove the taint of suspicion from a companion who had the misfortune of being with the deceased at the time of an accidental death, thereby avoiding a possible felony prosecution. It might also reflect an unwillingness to punish the deceased's kin through the property forfeitures that would follow from a felony conviction, as was the case for individuals found guilty of feloniously taking their own lives by suicide. Notably, drunkenness was not raised as an excusing

33 TNA JUST3/74/3, m. 14, AALT no. 0103 (1309/10), stating »quod predictus Johannes filius Thome per infortunium interfectus fuit et non per aliquam feloniam aut maliciam predicti Willelmi excogitatam.«

34 See Green (1985) 30–31. For a summary of pardon procedure and changes to it over the thirteenth century, see Hurnard (1969) 31–67.

35 Lyte (ed.) (1916), 520, no. 2087. On the place name, see Ekwall (1960) 542.

36 This marks a point of tremendous difference between the treatment of intoxication and anger in medieval English law. While the former could provide the basis for a finding of misadventure, the latter was sometimes given as an example of the *opposite* of misadventure. See, e. g., Kamali (2019) 110, n. 83 (citing Hurnard (1969) 76).

37 There would have been some precedent for this in Christian moral theology, which found no contradiction in treating acts committed unknowingly while a person was drunk as grave sins. See, e. g., Aquinas' borrowing from Ambrose: »›We learn that we should shun drunkenness, which prevents us from avoiding grievous sins. For the things we avoid when sober, we unknowingly commit through drunkenness.‹ Therefore drunkenness, properly speaking is a mortal sin.« Aquinas (1948) vol. 4, Pt. II–II, Q. 150, Art. 2.

factor in cases of suicide, although other impediments to the exercise of reason, most notably insanity, were relied upon to classify some suicides as non-felonious.[38] This suggests that intoxication was not available as an excuse when a person exercised some apparent agency in taking their own life, despite the fact that it served as the basis for classifying accidental deaths as non-felonious misadventures.

2.2 Self-defense Against an Intoxicated Aggressor

Unlike those who died in drunken accidents, victims of self-defense homicide were not viewed with the same measure of sympathy when they had, due to intoxication, initiated an altercation. In self-defense cases generally speaking, the narrative told by the self-defender in pursuit of a pardon frequently portrayed the homicide victim in an exceedingly negative light. In some instances, the victim was described as an anger-driven, bloodthirsty first attacker, to whom the self-defender had responded only reluctantly with lethal violence.[39] Like anger, drunkenness might be highlighted as a decisive factor in maligning a homicide victim as a vicious first aggressor in a self-defense narrative. By contrast, self-defenders tended to present themselves as sober, able to calculate precisely their likelihood of survival before employing deadly force. Naomi Hurnard speculates that a self-defender would have weakened his case for a pardon if he admitted being drunk, which would have called into doubt the absence of provocation and the idea that he had only struck the deceased to save his own life.[40] That said, there are exceptions to this pattern, suggesting that jurors grappled with these cases in all their circumstantial complexity, with no hard-and-fast rules to guide them.

To take an example of the kind of drunk-sober contrast as described by Hurnard, a 1310 gaol delivery case tells a tale of two sailors (*garcones de mari*), Geoffrey son of Odo and Robert Bathe, both of Kyngeburgh.[41] Robert fought with Geoffrey due to intoxication (*per ebrietatem contendebat*), striking him with a sword. Wishing to take refuge (*refugio habendo*) in a nearby village, Geoffrey fled from the boat, only to be pursued by his attacker. Eventually cornered by Robert, Geoffrey took out his staff and struck Robert in self-defense, killing him only to avoid his own death, and »not out of any felony or malice aforethought« (*non per aliquam feloniam aut maliciam excogitatam*). Geoffrey was remanded to gaol to await the king's pardon.[42] It is noteworthy that the plea roll explicitly attributed drunkenness only to the initial aggressor, not to the self-defender, who appears to have been able to calculate, with great sobriety, his chance of survival before counter-attacking in self-defense.

In a 1218–1219 York case, Malger the smith of Burton was accused of mortally wounding Robert son of Agnes in the head with an axe.[43] Malger was imprisoned, but the jurors at trial reported that the deceased, Robert, had been drunk (*ebrius*) and had attempted to enter Malger's house by force at night. In fact, it was only after Robert succeeded in forcefully entering the home that Malger struck him in the head. Rather than being convicted of felonious homicide, the self-defender was returned to prison to await a pardon.[44] Admittedly, sympathy for Malger's plight could have been enhanced not only by Robert's drunkenness but also by his

38 See Seabourne / Seabourne (2000) 8, 28. In Roman law, drunkenness might be regarded as a mitigating circumstance with regard to the suicide of soldiers. See Mittermaier (1840) 293.

39 See Kamali (2017) 17–19, 29–30.

40 Hurnard (1969) 98. On the frequent appearance of tavern brawls in self-defense fact patterns, see Hanawalt (ed. and trans.) (1976a) 13–14.

41 TNA JUST3/74/3, m. 8, AALT no. 0078 (1310), http://aalt.law.uh.edu/AALT7/JUST3/JUST3no74_3/IMG_0078.htm (*incipit* »Galfridus filius Odonis …«, last accessed 3 March 2022). This may be modern Conisbrough, derived from Cyningesburh, in Yorkshire's West Riding.

42 A quick search of the calendar of patent rolls for this portion of Edward II's reign did not turn up confirmation of Geoffrey's pardon.

43 Stenton (ed. and trans.) (1937) 354, no. 977.

44 I did not manage to find a record of pardon for Malger in the Calendar of Patent Rolls for this stretch of Henry III's reign.

attempt at a nocturnal housebreaking.[45] Such a combination of housebreaking and drunkenness similarly appears in a 1283 inquest into the death of John Bonde.[46] There, it appears that John Bonde and his killer, John de Tikehill, had been engaged in a drunken quarrel after leaving a tavern, and that Bonde had struck Tikehill thrice across the shoulders with a stick. Tikehill had fled home and taken refuge indoors. Bonde, however, came to the house, broke down the door, and dragged Tikehill's wife outside by the hair, beating her. When Tikehill came outside to protect his wife, Bonde pursued him with a drawn knife. Tikehill ultimately struck Bonde on the head with a stick, from which blow Bonde died. Although it sounds as though both men had been drinking, the inquest determined that Tikehill had killed Bonde in self-defense, and not of malice aforethought. In cases like this, drunkenness was just one of the factors held against the first aggressor, and in this instance the self-defender's case for a pardon was bolstered by the deceased's brutal assault on Tikehill's wife and by Tikehill's use of a stick, as opposed to a disproportionately lethal weapon, in response to a knife attack.

As should be clear from the examples above, it is exceedingly difficult to discern clear patterns in the treatment of intoxication by juries. Just as one begins to see a pattern, another case surfaces to throw it into doubt. For example, the 1248 death of Terry de Estland would appear, at first glance, to be a likely candidate for a pardon based on self-defense. Conrad de Bruneseye, in his own home, had argued with Terry, who proceeded to knock Conrad down and lie on top of him. Unable to escape with his life otherwise, according to the narrative that survives in a Chancery record, Conrad wounded Terry's shoulder with a knife. Terry succumbed to death ten days later, but this was after consuming half a gallon of wine after dinner. A writ was issued to the sheriff of Northampton to inquire into the death and specifically to ascertain whether Conrad killed Terry feloniously or by misfortune. The writ did not raise the possibility that Terry might have been responsible for his own death, having overindulged in wine while recovering from a shoulder wound. Neither did the writ suggest that Conrad might have killed Terry in self-defense, possibly due to the fact that it was unclear whether Terry had wielded a weapon against Conrad in the initial altercation, and also due to the intervening cause of Terry's excessive drinking on the evening of his death. While attributing the death to Conrad, the inquest concluded that Conrad had killed Terry by misfortune. A record of his pardon appears on Henry III's patent rolls.[47]

In a 1298 homicide case, to take one final example, a coroner's inquest was held into the death of John Burel in a case in which all involved appear to have been drinking.[48] Burel had died in the Oxford gaol, exhibiting severe head wounds, reaching to his brain (*usque ad cerebrum*). An inquest was summoned to inquire further into the death. The inquest explained that Burel, an Irish cleric, had been at Thomas de Graunton's tavern with other Irish clerics, including Nicholas Vilers and John de Suthfolk.[49] An argument arose (*mota fuit contentione verborum*), and the men stepped outside, still fighting (*contendentes*). Burel immediately wielded his sword and threatened (*insultabat*) Vilers, who raised the hue while attempting to flee the attack. Suthfolk similarly fled. Burel pursued, and he did so *viriliter*, with his sword outstretched and with a desire to kill his two fellow clerics. Vilers, feeling he had no alternative but to repel force with force (*vim vi repellendo*) in order to preserve his own life, struck Burel, but not mortally. Burel responded with a further attack on Vilers, an assault described as »*virilius, velocius, et acerbius*«. At this, Suthfolk swung into action, striking Burel at the base of his head (*cervice capitis*)

45 By the late thirteenth century, treatise evidence suggests that slaying a housebreaker could result in an outright acquittal. See Green (1985) 77–78, n. 34.

46 Lyte (ed.) (1916) 604, no. 2258.

47 Lyte (ed.) (1916) 553, no. 2059; Lyte (ed.) (1908) 35.

48 TNA JUST2/128, m. 1v, AALT no. 0007 (1298), http://aalt.law.uh.edu/AALT7/JUST2/JUST2no128/IMG_0007.htm (*incipit* »Contigit die Jovis proxima post festum Exaltationis sancte Crucis …«, last accessed 3 March 2022).

49 Clerics visiting taverns was a constant concern for the thirteenth-century English church, which repeatedly cautioned against the practice. See, e. g., Powicke / Cheney (eds.) (1964) 425 (no. 11).

with an axe (*hachia*), inflicting a wound from which Burel would later die in the Oxford gaol. Both Vilers and Suthfolk were imprisoned. Burel was acquitted of the homicide in a jury trial before the justices of gaol delivery. Suthfolk, on the other hand, was convicted by a jury but handed over to the bishop of Lincoln due to his clerical status, thereby avoiding a trip to the gallows. While the record provides an explanation for Vilers' acquittal, insofar as the blow he struck while facing down a vicious attack by the sword-wielding Burel was not mortal, the record is a bit more ambiguous as to why Suthfolk merited a felony conviction under the circumstances. It could be that Suthfolk's own alcohol consumption that evening, behavior unbefitting a cleric, made him an unworthy candidate for more lenient treatment once it was determined that he, and not Vilers, had struck the fatal blow. Other considerations could have swayed the jury toward a conviction, too, including the fact that the altercation involved two men against one; the circumstance that Suthfolk had used an axe, as opposed to a knife or sword that he might reasonably have carried on his person; and the jury's awareness that Suthfolk's clerical status would preserve him from the gallows, making a conviction less consequential. The role of alcohol, in other words, remains fundamentally ambiguous, and one could imagine a similar set of facts resulting in a finding of self-defense in other circumstances.[50]

All in all, in contrast to the apparent sympathy afforded those who died accidentally due to drunkenness, medieval juries appeared ready to judge as culpable those who attacked others while in a drunken state, with the possibility of a royal pardon for the sober self-defender who responded in kind with lethal violence. Individual cases resist categorization, however, particularly when all parties to a confrontation had been drinking, sometimes requiring further inquiry into whether a killing had been felonious, in self-defense, or even accidental.

2.3 Taverns as a Locus for Alcohol-Fueled Misbehavior

The case of the Irish clerics above highlights an oft-repeated refrain in the coroners' and plea rolls of medieval England: homicides occurring in, near, and on the way home from taverns. Taverns served as legitimate sites for people to gather and drink together, but they could also be sites of competitive play, gambling, quarreling, and even conspiring to commit crimes. In thinking about taverns as potential dens of criminal conspiracy, we might return briefly to the incident that opened this article: the 1272 slaying of Ralph the Bromham vicar by Robert Bernard and his group of fellow tavern-goers. At the coroner's inquest in late February, representatives from one village blamed Robert alone for the death, while three other villages also ascribed blame to Robert's three companions, who had consented to Robert's ill deed and were prepared to act if needed. Less than a month later, as the vernal equinox arrived, Ralph's widow brought a private accusation of felony against the four tavern-goers. In contrast to the coroner's inquest, which only attributed physical violence to Robert Bernard, Agnes described in gruesome detail the direct involvement of all four men in the fatal assault on her husband:

> There Robert Bernard struck Ralph with a ›spart‹ axe on the right side of the head, giving him a wound 15 inches long, 4 inches deep and 1 inch wide, from which he died. At the same time and place Robert of Shefford struck him with the back of a ›denesch‹ axe on his loins, breaking them, of which blow he would have died if he had not died of the first wound. Richard Norman struck him with a staff of apple-wood called ›clobbe‹ on the left side, breaking 2 ribs, of which he would have died if he had had no other blow. At the same time and place Roger Brien struck him on the back between the shoulders with an oak staff called

50 As was true in the case of the killing of Michael son of Roesia by Arnald le Knyth in 1265. According to an inquest into whether Arnald had killed Michael in self-defense, the two men had been drinking together at a tavern and fell into argument on their way home. Michael ran into his house and retrieved a scythe. Then, telling Arnald to wait so that he might drink to him, Michael struck Arnald between the shoulders. Seeing that Michael intended to kill him, Arnald struck him on the head with an axe (*hachia*), killing him immediately. The inquest determined that this had been self-defense, and Arnald received a pardon. Lyte (ed.) (1916) 568, no. 2123; Lyte (ed.) (1910) 617.

›clobbe‹, of which he would have died if he had had no other blow.[51]

Robert appears, in Agnes' formulation, to have been *primus inter pares*, the first in time to act but otherwise matched in the use of lethal violence by his companions. The widow went even further, launching accusations against the tavern host, Robert Malin of Bromham, and his wife Malina, whom she accused of »sending, ordering and harbouring [the others] in committing the felony«.[52] This aspect of Agnes' private appeal suggests that the brutal attack on Ralph, though possibly fueled by the men's drinking, might have been plotted in advance. Agnes stood ready to prove her accusation, and had backup as well in case she died before avenging her husband's death: Ralph's sister was ready to take responsibility for the private prosecution if needed. Ralph's death in late February would occupy his widow's time through spring and summer, as she asserted her intent to prosecute at county court sessions in April, May, June, and July, finally securing Robert Bernard's outlawry.[53] The other accused individuals produced sureties, and when Agnes asserted her prosecution again in August, Richard Norman, Robert Malin, and Malina his wife were handed over to the sheriff for safekeeping; later bailed, the three would be recommitted to gaol at the time of the Bedfordshire eyre, where they were ultimately acquitted by a jury.[54] Failing to appear, Robert of Shefford and Roger Brien were outlawed. It is unclear whether any man, Robert Bernard included, paid the ultimate price for Ralph's death, but the flight of some of them suggests a fear of this distinct possibility. In other words, Robert's attack on Ralph was not a simple instance of a single, extremely agitated drunk person lashing out at a victim; it was potentially a coordinated attack conceived within the walls of a local tavern, although a jury would acquit several who were allegedly involved.

Taverns could be sites of great danger, a locale for plotting vengeance and gathering an armed retinue in advance of a planned attack. In London in 1325, Walter de Benygtone came with seventeen companions to the brewhouse hosted by Gilbert de Mordone; their ill intent was manifested by the stones, swords, and knives they carried with them.[55] They proceeded to consume four gallons of beer while »lying in wait to seize and carry off Emma«, a young woman under the care of Gilbert the host. Asked to leave, the men responded that they would stay and spend their money, insofar as the house was a *mercatoria*, a public market. When Gilbert's wife then tried to take Emma to safety, Walter and his companions, »moved with anger«, assaulted Gilbert's brewer, Geoffrey, and others present, one of whom, Robert de Mordone, raised the hue and cry and fled into the high street. The coroner's inquest records that Walter de Benygtone pursued Robert outside with a knife in one hand and a misericorde (a type of dagger) in the other. Neighbors, including a man named Benedict de Warde, approached to try to pacify the men, and Walter responded with violence toward Benedict. Benedict seized a staff from a stranger, striking Walter on the head. Walter was carried to a nearby fountain and left outside overnight, perhaps indicative of how deep were the loyalties of his companions; he died shortly after being moved into a house the following day. The coroner's roll indicates that Benedict fled the locality, and I have not located a corresponding trial record. The narrative produced by the coro-

51 Hunnisett (ed. and trans.) (1961) 55–56. Agnes is described as the widow of Ralph the clerk of Bromham. Following a homicide in London in 1325, a coroner's inquest similarly described both aggressors as having inflicted mortal wounds on the deceased. See Sharpe (ed.) (1913) 112–113 (Roll D, no. 20).

52 Hunnisett (ed. and trans.) (1961) 56. Robert's name is spelled Malyn in Agnes' appeal of felony but he is likely the same Robert Malin identified in the coroner's report as the tavernkeeper.

53 When a person was repeatedly contumacious in responding to a private accusation of felony in the county court, they could be outlawed. The treatise *Bracton* indicates that the person could be outlawed at the fifth non-appearance. Thorne (ed. and trans.) (1968) 354.

54 Hunnisett (ed. and trans.) (1961) 56–57.

55 Sharpe (ed.) (1913) 114–115 (Roll D, no. 24).

ner's inquest paints Benedict in a sympathetic light, a neighbor stepping in to quell conflict within his local tavern and struck down by a man who had come to the tavern that evening armed with weapons and a large retinue, intent on engaging in criminal behavior.[56]

Violent deaths committed by groups of men inside and after leaving taverns appear with some frequency in the plea rolls. According to a 1280 case, Hugh son of Simon and Richard Freeman left a tavern and »fought together while drunk« (*ebrietate litigaverunt adinvicem*).[57] Hugh wounded Richard, who died three days later; he then fled and was outlawed as a result. Another man, William son of Adam, was attached for the same homicide but acquitted by a jury, and yet another individual connected to Richard's death managed to claim benefit of clergy. Hugh does not appear to have returned for trial, as his frankpledge group was ordered to pay a fine. His flight suggests that drunkenness would not have realistically excused his attack on his drinking companion. This was similarly the case with regard to a homicide that took place circa 1279 after an evening of drinking at an inn in Deneby (possibly Danby in North Yorkshire). Paulinus de Weteleye (likely Whitley, also in North Yorkshire) had been drinking with his brother, Thomas, and struck him fatally in the chest with a knife after they left the inn.[58] The truth only came to light when a second jury, composed of knights, rejected the story presented by an earlier trial jury that had pinned blame on one »Hugh la Ley«, who had reportedly been drinking with the two brothers and had argued with Thomas over the quality of some arrows he had sold to him. It appears that Paulinus or his supporters had invented the tale of Hugh's involvement in order to save Paulinus from the noose. The plot failed, and Paulinus ultimately faced the gallows.

Cases like these reinforced the view of taverns as a source of felonious activity, with alcohol easing the path toward individual and collective criminal behavior. A statute issued by Edward I in 1285 for the governance of London prescribed:

> And Whereas such Offenders as aforesaid going about by Night, do commonly resort and have their Meetings and hold their evil talk in Taverns more than elsewhere, and there do seek for shelter, lying in wait, and watching their time to do Mischief; It is enjoined that none do keep a Tavern open for Wine or Ale, after the tolling of the aforesaid Curfew; but they shall keep their Tavern shut after that hour, and none therein drinking or resorting; Neither shall any Man admit others in his House except in common Taverns, for whom he will not be answerable unto the King's Peace.[59]

Monetary penalties were threatened, with a fifth offense resulting in the taverner's loss of the trade forever. London's *Liber Albus* records an ordinance regulating taverners and brewsters, prescribing imprisonment for taverners who knowingly house a transgressor, an offense equated with receiving felons.[60] Above all, tavern behavior potentially threatened the king's peace. In Bedfordshire in the 1350s, a jury of presentment alleged that William Tolouse, John Hunte, and their associates were »common disturbers of the peace« (*communes perturbatores pacis*) who haunted taverns by night and day; William secured pledges, promising to respond to the allegations, while John, failing to

56 For a similar death of a person responding to violence within a London tavern in 1325, see Sharpe (ed.) (1913) 134–135 (Roll E, no. 2).

57 TNA JUST1/664, m. 42, AALT no. 3782 (1280), http://aalt.law.uh.edu/AALT4/JUST1/JUST1no664/aJUST1no664fronts/IMG_3782.htm (*incipit* »Hugo filius Syman de Cotum et Ricardus Freman …«, last accessed 3 March 2022).

58 The case is reported in Hurnard (1969) 363, n. 2, and the case record may be viewed at TNA JUST1/1060, m. 5 (1279), http://aalt.law.uh.edu/AALT4/JUST1/JUST1no1060/aJUST1no1060fronts/IMG_4799.htm (*incipit* »Juratores presentaverunt …«, last accessed 3 March 2022). The record describes a dispute arising (*orta contentione*) between the brothers after they exited the tavern after a night of drinking together.

59 Raithby (ed.) (1963) 102. Similar local regulations issued from London's Guildhall, too. See, e. g., Sharpe (ed.) (1901) 85.

60 Riley (ed.) (1862) 95.

appear, was outlawed.[61] In 1371, a jury of presentment reported to the justices of the peace at Winchester that John Hogyn had assaulted and wounded William Maistre, and that John furthermore was a »common disturber of the peace« who slept by day and kept vigil by night in taverns, »playing at checkers« (*ludendo ad scaccarium*) and »penny-prick«, while his neighbors knew not whence he derived his money.[62] Taverns could thus be sites of risky behavior and even criminal conspiracy. As the next section will illustrate, taverns were also ubiquitous, particularly in urban locations, and the center of social life, rivaling only the church as a foundation of local communities. To understand the mixed outcomes of felony cases involving alcohol consumption and intoxication, one necessarily has to grapple with the similarly mixed nature of religious exhortations and popular attitudes, a potent cocktail marrying the sweetness of alcohol's community-building potential with a realistic dash of bitters.

3 The Role of Alcohol in Medieval English Culture

The consumption of alcoholic drink was part of daily life in medieval England, where ale was a staple beverage.[63] Labor contracts might specify a ration of ale for agricultural workers, for example, and throughout the kingdom the production of ale, like bread, was closely regulated to ensure quality and price protections for consumers.[64] In urban centers, taverns were ubiquitous, a site for socializing, conducting business, and even contracting marriage, although the last was discouraged by church authorities.[65] One estimate suggests that London alone in 1309 had 354 taverns and 1,334 alehouses.[66] Ale and wine were widely enjoyed, with the latter increasingly available in the fourteenth century due to the expanding wine trade.[67] Admittedly, it was likely weak ale that accompanied most meals, ale that was frequently brewed by women.[68] That said, evidence from late thirteenth-century London suggests widespread wine consumption, too, with debts frequently recorded by taverners and others for casks of wine purchased from merchants hailing from Bordeaux, Toulouse, and other locales.[69] Londoners took their wine so seriously that a taverner, John Penrose, convicted of selling unwholesome wine in 1364, was sentenced »to drink a draught of his own wine, the remainder to be poured on his head, and he was to foreswear the calling of vintner unless he obtained the King's favour.«[70]

All told, alcohol consumption was widespread and largely non-controversial. Even the most moralizing of medieval theologians would not have

61 Putnam (ed.) (1938) 48 (no. 44).

62 Putnam (ed.) (1938) 207–208 (no. 18). Penny-prick (*penyprik*) was a game involving throwing something toward a penny target. See *Oxford English Dictionary*, 3rd edition (2005), *s. v.* »penny-prick«.

63 Bennett observes that medieval English people rarely drank water, milk, or wine, relying mostly on ale and later beer as well. See Bennett (1996) 8, 16–17. For estimates of ale and wine consumption, see Martin (2001) 29. On the late fourteenth-century introduction of beer, which was cheaper, more clear, and easier to ship due to its resistance to spoilage, see Martin (2009) 62. On the distinction between ale and beer and the timetable for the introduction of hopped beverages from Germany, see the glossary entry for »cerveise« in Riley (ed.) (1860) 707–708; Bennett (1996) 9.

64 For an example of laborers receiving bread, meat, and ale while helping with the harvest in a thirteenth-century manor, see Maitland (ed. and trans.) (1889) 103. On the regulation of ale, see Bennett (1996) 98–106.

65 For an example of an exhortation not to hold wedding in taverns, see Stephen Langton's guidance for Canterbury in the 1220s. Powicke / Cheney (eds.) (1964) 165–167. My thanks to Charles Donahue.

66 Austin (1985) 100. See also Sharpe (ed.) (1902) xix.

67 See Austin (1985) 100–101. On the distinction between alehouses and wine-taverns, and on the strict inspection of ale quality, see Riley (ed.) (1859) lxi–lxiii.

68 See Austin (1985) 88. On the history of women in brewing, see generally Bennett (1996). See also Riley (ed.) (1859) lix–lx (indicating that the best ale in fourteenth-century London was thin and unlikely to intoxicate); Martin (2001) 32–33 (on strength of ale and wine).

69 See, e. g., Sharpe (ed.) (1899) 9 (debt owed by taverner to a burgess of Bordeaux for wine), 21 (casks of wine as security for a final concord between a vintner and two other men), 41 (debt for wine owed to a merchant from Toulouse). Dozens of such debts appear throughout this volume.

70 Sharpe (ed.) (1905) 178. Penrose was readmitted to his trade roughly four years later. See Sharpe (ed.) (1905) 178–179.

suggested that alcohol should be eliminated from one's diet.[71] While scriptures included cautionary tales, like the story of Lot's drunken incest, wine also played an approved starring role in gospel narratives, from the wedding at Cana to the Last Supper.[72] As A. Lynn Martin observes, excessive drinking »could provoke disorder and violence, but recreational drinking also promoted celebration, socialization, and jollification.«[73] Drinking was at the heart of community-building events that might, in fact, disrupt violence.[74] It was also tied to important life and death events and celebrations. When William de Schaftow, aged 50, was interrogated about a birth two decades earlier during an inquisition post mortem, the memory marker on which he relied was an episode of drinking in celebration of the baby's arrival. The festivities were all the more memorable because William had become so drunk that he had fallen and broken his leg.[75] New lives were celebrated with drinking, and deaths were commemorated by drinking, too, both by those gathering to mourn an individual's passing and by the beneficiaries of charitable largesse. When Gilbert Lyndeseye, a tiler, died in London in 1376, his bequest directed the expenditure of money to purchase spices, wine, and ale to entertain his neighbors on the day of his funeral, as well as ale to be consumed at his *dirige*, the service for the dead.[76] Because it was a necessity, ale might also be distributed as a work of charity.[77] At the 1319 funeral of Lady Margaret de Neville, an incredible 1,440 gallons of ale were distributed.[78] Parishes might raise operating funds by holding special festivities, often referred to as »scotales«, although admittedly evidence for this phenomenon tends to be concentrated in the fifteenth and sixteenth centuries.[79]

Drinking was part of daily life. Yet it held its dangers, too, and these were well known from lived experience and from religious sermonizing. In Dan Michel's *Ayenbite of Inwyt*, a mid-fourteenth-century translation of the French *Somme le Roi*, the author suggests that a drunk man imperils his prospects for the afterlife:

> Those who live by the flesh, as says Saint Paul, slay their souls. For they make of their bellies their god. The same neither hold reason nor measure. And therefore they shall have in the other world pain without measure.[80]

Confessors' manuals often harp upon the particular perils of routine excessive drinking. For example, Thomas of Chobham (d. circa 1233–1236) treated »habitual drunkenness« (*ebrietas consuetudinaria*) as a mortal sin in light of the fact that »the habit of drunkenness is a sign and *indicium* that man places before God the pleasure that he has from drinking.«[81] Elsewhere in his *Summa*, Chobham listed »drunkenness, if constantly repeated« (*ebrietas, si assidua sit*) alongside sins such as sacrilege, homicide, adultery, fornication, false testimony, rape, theft, pride, hatred, avarice, and long-held anger.[82] Texts like these distinguished habitual drinking as especially worthy of condemnation, suggesting the possibility of a different, more lenient treatment for the occasional overindulgence on a feast day or other special occasion.

71 Aquinas (1948) vol. 4, Pt. II–II, Q. 149, Art. 3 (relying on Matthew 15:11 for the idea that »No meat or drink, considered in itself, is unlawful«, although he conceded that drinking wine could »become unlawful accidentally« depending upon the circumstances, including a drinker who was bound by a vow not to drink or who voluntarily drank out of measure).

72 Genesis 19:30–38 (Lot and his daughters), John 2:1–11 (wedding at Cana), Matthew 26:20–29 (Last Supper).

73 Martin (2009) 13.

74 Martin (2009) 13.

75 Dawes et al. (eds.) (1988) 123–124. William had been drinking with the baby's father, Roger de Wyderyngton (Widdrington, Northum). Regarding the place name, see Ekwall (1960) 517. His testimony confirmed that of other witnesses who attested to the fact that the baby was now twenty-one years of age.

76 Sharpe (ed.) (1890) 192. On the *dirige*, see Skeel (1926) 301.

77 Martin (2001) 20 (describing a 1265 gift of 147 gallons of ale to the poor from the household of Eleanor de Montfort).

78 Martin (2001) 20.

79 French (1997) 129–131; Rosser (1994); Martin (2001) 2.

80 Gradon (ed.) (1965) 53. »Þo þet libbeþ be þe ulesse ase zayþ zaynte paul hi slaȝeþ hire zaulen. Uor hi makeþ of hare wombe hare god. Þe ilke ne hyealdeþ scele ne mesure. And þeruore hi ssolle habbe ine þe oþre wordle [sic] pine wyþ-oute mesure.«

81 Chobham (1968) 409. »… quia consuetudo ebrietatis est signum et indicium quod homo preponit deo delectationem quam habet ex potu«. It is noteworthy, however, that habitual drunkenness did not begin to appear in the act books of ecclesiastical courts until the early seventeenth century, along with premarital sexual activity and other social ills. See Helmholz (2019) 88.

82 Chobham (1968) 18.

Drunkenness had long been condemned in penitentials and manuals for confessors as a gateway to other sins and was also treated topically in manuals for preachers.[83] In his *Liber Poenitentialis* (circa 1208–1213), Robert of Flamborough, canon-penitentiary of Saint-Victor at Paris, described drunkenness as a great evil »from which all evils spring forth« (*unde omnia mala pululant*).[84] Other texts associated taverns and intoxication not just with sin, a problem of the internal forum, but also with capital crime. Thomas of Chobham, in his *Summa Confessorum*, linked drunkenness with adultery and homicide, as well as argumentativeness and contention generally.[85] The Dominican Jofroi of Waterford's French translation of the *Secretum Secretorum* specifically mentioned the tendency to overconsume wine leading a person to »homicide, larceny, adultery, and other horrible and hideous sins« (*a homecide et a larechin et a avvoltierge et a autres pechiés oribles et hidous*).[86] The *Ayenbite of Inwyt* described the gluttonous overconsumption of food and drink, much like some of the sins listed by Chobham above, as leading stepwise to the gallows:

> For first of all he becomes a frequenter of taverns. Then he plays at dice. Then he sells his own [property]. Then he becomes a ribald, fornicator, and thief. And then he is hanged. This is the price that one often pays.[87]

Not surprisingly, persons frequenting taverns caused anxiety for lawmakers, who prescribed during the reign of Edward II (r. 1307–1327) that the view of frankpledge should include an inquiry into »such as continually haunt Taverns, and no Man knoweth whereon they do live«.[88]

Writing later in the fourteenth century, John Wycliffe (d. 1384) similarly railed against those who overindulged in drinking, particularly on holy days. Wycliffe targeted his critique first toward burgesses, merchants, and other rich commoners, who believed it a great advantage to spend excessively on their household and enjoy lavish feasts.[89] He also attributed the same gluttonous tendency to »many poor laborers« who might suffer »uneven nourishing« due to drunkenness, particularly those who, rather than eating and drinking in good measure throughout the work week, would spend all their earnings on a holy day, thereby being ill-equipped to serve God.[90] While the plea rolls may say little directly about drunkenness, religious and popular literature reveal a world in which excessive drinking was both common and commonly criticized as a rejection of God and a privileging of pleasure over piety.

The legal records explored in the preceding section demonstrate that jurors treated intoxicated actors harshly, except when they treated them leniently. They sometimes excused as misadventure a death resulting from an alcohol-fueled brawl, and other times were comfortable treating a drinking partner as a felon even when the facts could have been framed to support a claim of self-defense. Jurors' reactions to drinking and drunkenness in felony cases resist easy categorization, suggesting that circumstantial, prudential judgments, rather than rigid rules or expectations, guided juries' decisions in individual cases. This apparently contradictory treatment of drinking

83 In this last category, see John Bromyard's treatment of »ebrietas« in his alphabetically organized summa for preachers. Bromyard (1586) 218–220.

84 Flamborough (1971) 264.

85 Chobham (1968) 412, mentioning »… adulteria, homicidia, rixe, contentiones, et omnium mandatorum dei oblivio«.

86 Henry (1986) 16.

87 Gradon (ed.) (1965) 51. »Vor alþeruerst he becomþ tauernyer. Panne he playþ ate des. Panne he zel his oȝen. Panne he becomþ ribaud, holyer, and þyef. And þanne me hine anhongeþ. Þis is þet scot þet me ofte payþ.« A more literal translation of »þanne me hine anhongeþ« would be »then man hangs him«.

88 Raithby (ed.) (1963) 246 (not my translation). On taverns as ambiguous and often disorderly spaces, see Hanawalt (1999).

89 Wycliffe (1871) 160 (»burgeis and marchaundes and oþer riche comynes. Hom þenke it is a grete avaunt to spende myche in household, and make grete festis to lords; and hereof comes myche yvel; ffor by þis ben parties made, and many wrongis mayntened.«). See also Wenzel (ed. and trans.) (1989) 632–633.

90 Wycliffe (1871) 160 (»And not onely riche comyns synnen þus in glotonye, bot mony pore laboreres ben blemyschid by þis synne, and specialy in dronkenesse, for uneven norisching … for soche men schulden warly ete and drinke, and take sum drinke on werk day, and not spende al on holy day; ffor þis þing unables hom to serve God on holy day …«). Similar complaints appear in sixteenth-century regulations. See McIntosh (1998) 112.

and intoxication in felony cases makes greater sense in light of two competing factors visible in medieval English culture: the centrality of drinking to daily life and important celebrations, and the condemnation of excessive drinking in moralizing literature, which aimed at discouraging gluttony and demonstrating how alcohol intoxication tended to lead stepwise towards more serious sinful and criminal behavior. Jurors might have heeded the strict religious messaging to some degree, but done so with a greater inclination toward indulgence when a defendant's drunkenness in a particular case did not fall too far beyond the bounds of acceptable or understandable social behavior.

4 Drunkenness as Metaphor

In modern American criminal law casebooks, intoxication is sometimes paired with insanity to help students recognize the commonalities between the two conditions and the ways in which the law nevertheless treats the two topics distinctly.[91] Intoxication is not pedagogically paired with the doctrine of provocation, through which anger-fueled acts can sometimes give rise to a partial excuse.[92] In medieval England, we find anger and insanity alike fusing with the issue of intoxication both in legal records and in literary sources, with the former concepts sometimes providing a metaphor for intoxication, and vice versa. Nonetheless, in its treatment of drunken actors, the common law of felony ultimately handled intoxication more like anger and less like insanity, the latter being presumptively exculpatory. Like anger, drunkenness was a matter to be weighed circumstantially by jurors, who engaged in complex ethical and moral calculations worthy of inclusion in William of Pagula's *Oculus Sacerdotis*, which guided priests in discerning the nuances in various scenarios involving uncertainty, drunkenness included.[93] In homicide cases, jurors' prudential decision-making was hampered by the absence of doctrinal nuance; a clearly delineated manslaughter category, punished less severely than murder, could have eased the pressure on jurors forced to decide more starkly between capital homicide or not. Nevertheless, the mixed bag of outcomes – convictions, acquittals, and pardons – in cases involving alcohol consumption and intoxication indicate that jurors had latitude in weighing that factor among the many circumstances of an alleged felony.

4.1 Intoxication and Insanity

In medieval English felony law, insanity was treated as a presumptively excusing condition, while intoxication was not.[94] This is despite the fact that, in literary texts, we can find the metaphor of insanity used to signify a state of drunkenness, such as in the story of Chaucer's summoner, who was described as behaving »wood«, or mad, after consuming too much wine:

> Wel loved he garleek, onyons, and eek lekes,
> And for to drynken strong wyn, reed as blood;
> Thanne wolde he speke and crie as he were wood.[95]

Chaucer similarly approved of the words of Seneca, whose stoical tendencies led him to condemn the vice of drunkenness:

> Senec seith a good word doutelees;
> He seith he kan no difference fynde
> Bitwix a man that is out of his mynde
> And a man which that is dronkelewe
> [i. e., habitually drunk] …[96]

91 See Kadish et al. (2017) 1004–1071.

92 In the same casebook, provocation appears within the discussion of homicide doctrine rather than under excusing conditions like intoxication and insanity. See Kadish et al. (2017) 462–489. For a discussion of anger and drunkenness in modern law, see Mittermaier (1840) 308–320 (arguing that any equation of the two conditions for legal purposes is inapt, insofar as the angered actor has allowed his passions »dominion over his life« and usually lashes out due to some preexisting circumstance, while a drunken actor lashes out without reference to preceding circumstances). See also Hall (1944) 1052 (observing that courts never count drunkenness as a form of provocation, thereby denying »legal effect to the admitted fact that drunken persons are more easily aroused and lose self-control more readily than do sober ones«).

93 See Corran (2017) 31.

94 See Kamali (2019) 53–56; Butler (2010).

95 Benson (ed.) (1987) 33 (Canterbury Tales, General Prologue, I(A).634–636).

96 Benson (ed.) (1987) 196 (Canterbury Tales, The Pardoner's Tale, VI(C).492–495).

Thus, intoxication's effects might be likened to madness, particularly in the literary context.[97] Only occasionally do we see a hint of this idea making its way into legal records. In a 1286 inquest organized by the sheriff of Cumberland into the self-inflicted death of Ralph Deublet, the question posed to the jurors was whether Ralph had killed himself »in a fit of madness (*furore ductus*) or by misadventure«.[98] The inquest described how Ralph, on the evening of All Saints Day (a feast day, incidentally, on which people might indulge more than usual in intoxicating drink), became so drunk »that he did not know what he was doing (*nichil scivit de seipso*)«. He entered the home of Thomas le Tayllor, walked upstairs, and fell on top of the sleeping Thomas. Thomas awoke with a start; Ralph, fleeing downstairs, fell upon a cartload of wood, receiving a fatal head wound. Rather than ascribing his drunken death to madness, the inquest determined that it had been a misadventure. It is noteworthy that »felonious« was not among the options posed to the inquest by the writ, which was instead geared toward ascertaining whether Ralph's intoxicated behavior – a fall to his death after an illicit housebreaking – was categorically insanity or misadventure. The inquest's conclusion that Ralph did not understand his own actions suggests a level of intoxication that gave rise to severe cognitive impairment. Nevertheless, the jury settled on misadventure and not insanity in determining which category of excuse applied to Ralph's tragic death.

Generally speaking, intoxication does not appear to have been equated with insanity in medieval English legal records. When a jury concluded that a person had committed a felony while in the throes of a severe mental illness, a record was produced detailing the duration and nature of the person's affliction and confirming that they were impaired by that condition at the time of their alleged felony.[99] Robert son of Adam, for example, was found by a Northamptonshire jury in 1329 to have been ill with lunacy for fourteen years and suffering acutely from that illness at the time that he killed his servant.[100] The treatise *Bracton*, comparing an insane person's lack of reason to that of a minor, alludes to the »unkindness of fate« in describing why lunatics are to be treated with leniency, providing some insight into why the common law provided pardons *de cursu*, as a matter of course, for those who committed alleged felonies while in a state of insanity.[101] While a drunk person might appear to behave like a lunatic, the cause of actual lunacy was distinct from the cause of the *appearance* of lunacy brought on by drunkenness. Unlike insanity, which was understood to be an illness of long-standing duration, intoxication – even of the habitual variety – was not yet understood to be indicative of a diagnosable illness. While an illness was an affliction, intoxication was a voluntarily acquired condition, setting aside the comparatively rare instance of involuntary intoxication.

In her study of the royal pardon, Hurnard identified a rare occurrence in which a man, Thomas le Potter, subject to periodic lunacy, became drunk while dining away from home. When his host tried to ensure that he returned home safely, Thomas killed him. The jurors described Thomas as having been led to the killing »by lunatic illness, raving fury, and drunkenness«, and he was remanded to prison to await the king's pardon.[102] Presumably such a pardon would not have been issued had Thomas' only excuse been his drunken state. Intoxication's attendant impairments might resemble or, as in this instance, accompany madness, but the comparison was mere metaphor. Extreme anger, too, might give a person the appearance of madness, yet in the medieval English common law it was never treated as presumptively exculpatory like insanity.

97 Note, however, that Chaucer's emphasis on habitual drunkenness in his choice of the term »dronkelewe« would seem to foreshadow much later legal characterizations. See, e. g., Odgers / Odgers (1920) 1385, which states: »Habitual drunkenness, although not in itself affording excuse for crime, may induce insanity …« This was treated as an exception to the rule regarding voluntary drunkenness, which did not excuse a person from crime. For a similar treatment of *delirium tremens* as the equivalent of insanity and therefore giving rise to an excuse, see Jenks (ed.) (1922) 26.

98 Lyte (1916) 611, no. 2285.

99 Kamali (2019) 53–56. See also Butler (2010).

100 Sutherland (ed. and trans.) (1983) 215–216; Kamali (2019) 53–54.

101 Thorne (ed. and trans.) (1968) 384.

102 Hurnard (1969) 168.

4.2 *Intoxication and Anger*

Like intoxication and insanity, anger and insanity served as metaphoric signifiers for each other. Thinking back to the case that opened this article, Robert acted out violently »because he was drunk«, according to the coroner's inquest, and one senses the presence of anger in his physical reaction – no slight jab, but a vicious axing – to Ralph's literal-minded response to his question, »Who are you?« Anger and alcohol presented a toxic combination, channeling two deadly sins – *ira et gula*, wrath and gluttony – toward a single lethal end. Of course, anger alone could be deadly, giving rise to felonious acts.[103] Anger's affinity with intoxication did not escape medieval English writers, who played with the language of ire and inebriation in cautioning against sin and vice. The confessor-narrator of John Gower's *Confessio Amantis* describes the »mischief« that results from a person failing to control his anger:

> My son, for your heart's ease
> I shall fulfill this prayer,
> So that you might the better learn
> What mischief this vice causes,
> When one in his anger does not forebear,
> Such that he regrets,
> When he is sober and thinks
> About the folly of his deed.[104]

Unchecked anger, in Gower's treatment, produces a witlessness that can only be looked upon soberly once the passion has passed.

William Langland, in Passus V of *Piers Plowman*, would in turn suggest a causal connection between excessive drink and the generation of wrath, with the character of Repentance cautioning Anger: »Don't drink with too much delight, nor too deeply either, / Lest your will and your wits be overwhelmed by wrath.«[105] Thus, just as anger might function like drunkenness, the state of intoxication might give rise to anger. Seneca, whose writings on anger were widely drawn upon by medieval theologians and authors, observed: »Wine kindles anger because it increases the heat; some boil over when they are drunk, others when they are simply tipsy, each according to his nature.«[106] Aquinas drew upon Aristotle in arguing that those who were extremely drunk do not get angry, while »those who are slightly drunk, do get angry, through being still able, though hampered, to form a judgment of reason«.[107] Aristotle had attributed this to the fact that »those who are only slightly intoxicated can still exercise their judgement because they are not very drunk, but they exercise it badly because they are not sober, and they are ready to despise some of their neighbors and imagine that they are being slighted by others«.[108]

Anger and inebriation were understood as sister sins, or perhaps criminal kin, and so treated similarly in the medieval English common law of felony. Unlike insanity, intoxication offered no grounds for a royal pardon. One will not find in the plea rolls a defendant making the case that they did commit an alleged felony, but did so only because they were drunk and therefore ought to be excused. Similarly, the medieval English common law made no explicit concession to anger, as it would come to do by the sixteenth and seventeenth centuries with the development of the doctrine of provocation.[109] This parallel treatment of anger and drunkenness may be due to the fact that drunkenness, like extreme anger, could manifest a long-standing failure to cultivate commendable life habits. Both the angered and the inebriated individual might be condemned for having voluntarily contracted their condition (by developing a habit toward angered responses, or by choosing to drink excessively, respectively). Just like anger, drunkenness might be highlighted in a self-defense narrative in order to emphasize the out-of-control, murderous actions of the deceased, as contrasted with the calm, sober response of the self-defender, who only killed after perceiving no other way to preserve his own life.

There remain other parallels between anger and intoxication in medieval England. As we saw earlier, quarreling and alcohol consumption were

103 See generally Part II of Kamali (2019).
104 Gower (2003) 154 (Book 3, lines 134–141).
105 Langland (2006) 73 (Passus V, lines 184–185).
106 Seneca (1928) 206–207.
107 Aquinas (1948) vol. 2, Pt. I–II, Q. 46, Art. 4, Reply Obj. 3.
108 Aristotle (1927) Book 3.2. My thanks to Jonathan Baddley.
109 See generally Kamali (2017).

sometimes intertwined in discussions of disorder arising in taverns. Long-held anger and alcohol consumption could grease the wheels of conspiracy when men gathered in taverns to plot vengeance. On the other hand, both anger and drinking had positive valences: anger could be a justified response to an injustice, and above-average levels of alcohol consumption could be socially acceptable in celebration of feast days and major life events. Both conditions were ultimately left to the prudential judgment of jurors to weigh in their circumstantial examination of all the facts in a felony case. Admittedly, anger less often provided grounds for a finding of misadventure, but even here there is the occasional example of an angered individual thrusting himself upon a self-defender's outstretched knife, thereby bringing about his own death accidentally.[110]

4.3 Intoxication and Loss of Reason

Intoxication's affinity with both insanity and anger derived from its effects on a person's reason or »wit«, as it is often referenced in medieval English sources. Chaucer, in *The Parson's Tale*, would colorfully describe drunkenness as »the horrible sepulture of mannes resoun« and, therefore, a deadly sin.[111] This was due in part to the tendency of drunkenness to deprive a person of »the discrecioun of his wit«.[112] Providing some insight into this impairment of reason in *The Knight's Tale*, Chaucer's knight observed:

> A drunk man knows well he hath a house,
> But he knows not which the right way is thither,
> And to a drunk man the way is slider [i. e., slippery].[113]

Consider, too, this exhortation toward sobriety in Robert Mannyng's *Handlyng Synne*:

> If at a feast or at a tavern,
> With immoderation you drink so profusely,
> That you your clear speech have lost,
> Your wit is not as it was before.
> And your eyes may not see
> But [one] of a thing seems three,
> And you your steps may not guess,
> All such thing gluttony is.[114]

Despite this emphasis on condemning deliberate overindulgence, legal treatises and religious texts also acknowledged that drunkenness, like anger, might lead to impulsive behavior, which might seem to be less culpable than intentional behavior. The *Bracton* treatise, for example, discusses drunkenness in the context of sorting more from less deliberate offenses, observing: »Robbers commits [sic] offences intentionally, by deliberation; those who are drunk, by impulse (*impetu*), moved by their drunkenness (*per ebrietatem*), when a matter comes to blows or the sword; by accident, when they occur through misadventure, as where in hunting one kills a man by a spear thrown at a beast, or does some similar act.«[115] This would

110 See, e. g. Green (1985) 91 and n. 89. Such cases might end in acquittal or pardon.

111 Benson (ed.) (1987) 316 (Canterbury Tales, The Parson's Tale, X(I).821).

112 Benson (ed.) (1987) 316 (Canterbury Tales, The Parson's Tale, X(I).823).

113 Benson (ed.) (1987) 42 (Canterbury Tales, The Knight's Tale, I(A).1262–1264). »A dronke man woot wel he hath an hous, / But he noot which the righte wey is thider, / And to a dronke man the wey is slider.« The word »slider« meant slippery or uncertain. See *Middle English Dictionary*, *s. v.* »slider«. The distinction loosely parallels the legal notion today that an intoxicated person might be capable of forming general but not specific intent. See, e. g., *Regina v. Stopford* (1870), in Cox (ed.) (1871) 643–645; *Rex v. Beard* (1920), in Cox (ed.) (1921) 573–590; Odgers / Odgers (1920) 1385. See also Jenks (ed.) (1922) 24, citing *R. v. Meade*, 1 K.B. 895 (1909); *Regina v. Doherty* (1887), in Cox (ed.) (1890) 306–310. On the problematic logic, or lack thereof, underpinning the distinction between general and specific intent in the context of intoxication, see Hall (1944) 1061–1066.

114 Mannyng (1983) 163, lines 7–14 of the Osborn MS interpolation. »Yf at feste oþer at tauerne, / Oute o skyll drynkes soȝerne, / Þat þou þi clere spech hase lorne, / Þi wytte es noȝte als was be forne. / No þine eghene may noghte se / Bot of a thynge semes thre, / Na þou þi steppes may noghte gesse, / All swylk thynge glotony es.«

115 Thorne (ed. and trans.) (1968) 299. The Roman jurist Marcian similarly treated *ebrietas* (drunkenness) as a form of *impetus*, which Mittermaier takes to suggest an inclination to ascribe culpability to drunken acts, but to assign lesser punishment than for a calculated, cold-blooded act. See Mittermaier (1840) 293.

seem to place drunken acts of violence somewhere between intentional and accidental acts on a volitional scale, although we find in the plea rolls evidence that some alcohol-fueled deaths were treated as intentional felonious homicides and others as misadventure, depending on the circumstances. This correlation between drunkenness and impulsivity may be found as well in Thomas of Chobham's *Summa Confessorum*, which described an impulsive cause as »that which, suddenly born, compels a man to any evil act, such as drunkenness, anger, love, a feminine figure, hunger, thirst, nudity, and the like«.[116] Thus, alcohol intoxication could at once be condemned as a voluntary choice and yet also be understood to give rise to impulsivity, which could, in turn, make a resulting act appear more compelled than freely willed.

All in all, the common law's mixed approach to cases involving drunkenness – sometimes using it to demonstrate that a death was accidental, other times using it in support of a felony conviction – reflects a cultural understanding of the sinful nature of deliberate intoxication as well as an awareness that extreme inebriation might separate a person from his or her capacity to exercise reason. Because drunkenness, like anger, could push in either inculpatory or exculpatory directions, the common law, rather than prescribing explicit rules for the treatment of inebriation in felony fact patterns, left the matter largely up to the discretion of judge and jury, who would sort cases based upon their evaluation of the circumstances.[117] Jurors might have sometimes found cause to sympathize with a defendant despite their anger or inebriation, although the cause of such sympathy remains largely invisible to the historian who sees only an acquittal or a pardon on the plea rolls.

Conclusion

The medieval English common law treated the factor of drunkenness in felony fact patterns with some ambivalence, leaning in some instances toward condemnation rather than excuse, anticipating the proverb cited in the sixteenth century that one who »kyllyth a man dronk, sobur schalbe hangyd«.[118] Thomas Starkey (circa 1495–1538), in fact, quoted Reginald Pole (1500–1558) for the idea that by making a man the cause of his own ignorance, drunkenness »makyth hym more worthy of punnyschement and blame«.[119] Similarly minded was Sir Edward Coke, who was quick to blame the Danes for having introduced excessive drinking to England.[120] Elsewhere he wrote: »As for a drunkard who is *voluntaries daemon*, he hath, as has been said, no privilege thereby, but what hurt or ill so ever he doth his drunkenness doth aggravate it. *Omne crimen ebrietas et incendit et detegit*.«[121] Also taking a tough stance against intoxicated behavior in the early seventeenth century, Sir Francis Bacon (1561–1626) contended that »if a drunken man commit a felonie, he shall not be excused because his imperfection came by his owne default«.[122] Mathew Hale (1609–1676) argued, in like fashion, that a drunken person »shall have no privilege by this voluntary contracted madness, but shall have the same judgment as if he were in his right senses«.[123] Hale made an exception for persons placed in the condition of drunkenness by an unskilled physician or by enemies, and in the case of a »habitual or fixed phrenzy«, which would be treated like involuntary intoxication even if the person initially began drinking willfully.[124] Michael Hawke, in *The Grounds of the Lawes of England* (1657), would

116 Chobham (1968) 56 (»… que subito nata impellit hominem ad aliquod scelus, ut ebrietas, ira, amor, forma muliebris, fames, sitis, nuditas et similia«).

117 On the interplay between justices and juries in English felony cases, see generally Kamali / Green (2018). And on the likelihood of justices leaning toward granting deference to jury verdicts, see Kamali (2019) 258–262.

118 Herrtage (ed.) (1878) 31, lines 171–172. For a similarly stern stance, see Putnam (ed.) (1924) 378–379. See also Baker (ed. and trans.) (1994) 424, no. 80. Frequently cited in discussions of the intoxication defense is the 1551 case of *Reniger v. Fogossa*; see note 12 above. It is noteworthy that complaints about alehouses and drunkenness became more common during the sixteenth century. See McIntosh (1998) 31, n. 20.

119 Herrtage (ed.) (1878) 31, lines 169–170.

120 Coke (1644) 200.

121 Wharton (1880) 49 (citing Co. Litt. 247a). The Latin maxim translates to »drunkenness inflames and exposes every crime«.

122 Bacon (1630) 34. On changes in English drinking culture in the early seventeenth century, see Withington (2011).

123 Hale (1847) 32.

124 Hale (1847) 32.

describe such a drunken wrongdoer as »worthy of double punishment« because of having doubly offended by setting a bad example of drunkenness and committing the accompanying prohibited act.[125] This would seem to be a modification of the Aristotelian approach to intoxication, one which Aquinas chose not to follow to the letter: »The Philosopher does not say that the drunkard deserves more severe punishment,« observed Aquinas, »but that he deserves double punishment for his twofold sin.«[126]

Yet one must be cautious in interpreting these condemnations of intoxication in early modern treatises. While they appear to demonstrate a new, zero-tolerance approach to intoxication in felony cases, they were articulations of principles that would ultimately be applied – or not – by judges and juries faced with felony defendants, just as religious condemnations of intoxication were applied – or not – by medieval English jurors weighing the circumstances of a particular case centuries earlier. In her work on criminal responsibility in eighteenth-century England, Dana Rabin has illuminated the arguments presented by defendants hoping to excuse their drunken behavior by emphasizing such side effects of excessive drinking as memory loss and susceptibility to persuasion.[127] Such excuses of »simple drunkenness«, often presented by men who might capitalize upon the sympathies of »jurors and judges who drank to drunkenness themselves«, as well as claims of »insanity-drunkenness«, through which defendants tried to argue that their behavior was influenced by mental illness rather than the effects of alcohol intoxication alone, stand in contrast to the stark pronouncements of legal treatise authors.[128] Writing in the mid-eighteenth century, for example, William Blackstone pronounced: »… as to artificial, voluntarily contracted madness, by drunkenness or intoxication, which, depriving men of their reason, puts them in a temporary phrenzy; our law looks upon this as an aggravation of the offence, rather than as an excuse for any criminal misbehaviour«.[129] Blackstone likely borrowed the idea of a temporary »phrenzy« from the writings of Hale.[130] Recognizing, however, as his medieval forebears did, that drunkenness might impair a person's capacity to reason, Blackstone also listed intoxication alongside infancy, idiocy, and lunacy as an example of a case involving »a defect of understanding« such that will and act might not coincide.[131] All told, Blackstone's approach emphasized several insights: the voluntariness of intoxication for those who chose to drink to excess, the metaphor that might nevertheless be drawn between drunkenness and insanity, and the fact that the common law would generally treat intoxication as an aggravating rather than an excusing factor. We can find similar tendencies in the medieval English approach to dealing with drunkenness, particularly the condemnation of voluntary drunkenness and the tendency to treat inebriation as a damning factor rather than an excuse under some circumstances. Rabin's work suggests that there may also be some continuity in the tendency of jurors and judges – in medieval as well as early modern England – to treat some defendants' behavior as partially or wholly excusable despite the more severe tendencies of religious, moral, and legal treatises.

In short, the medieval English common law did not have a simple answer to the question of how drunkenness, like anger and other strong emotions, should affect the outcome of felony cases. Drunkenness might help a jury make the case for calling a death a misadventure, might assist a self-defender in arguing that he had no alternative but to kill the drunken person assaulting him, and might also incline a jury toward a felony conviction when a post-curfew brawl outside a tavern ended in homicide. In this last instance, the presumption appears to have been toward treating

125 Hawke (1657) 233–234. See also Hicks (trans.) (1659) 20, arguing that if a drunk man kills another, even though he acted out of ignorance, »this ignorance cometh by his own act and folly, which he might have resisted; therefore he shall not be priviledged, because he himself was the cause of such ignorance«.

126 Aquinas (1948) vol. 4, Pt. II–II, Q. 150, Art. 4, Reply Obj. 1.

127 Rabin (2004) 78–79.

128 On simple drunkenness, see Rabin (2004) 79; on insanity-drunkenness, see Rabin (2004) 83–85. See also Green (1985) 307 (quoting Martin Madan's observation regarding jury lenience and judge acquiescence in exercising mercy toward some offenders who had been »in liquor« at the time of their offense).

129 Blackstone (1770) 25–26.

130 Hale (1847) 32.

131 Blackstone (1770) 20–21.

such homicides as felonious. In considering whether a particular defendant haled before them merited conviction or acquittal, medieval English jurors considered a range of circumstances. While it is likely that alcohol factored into jury decision-making in individual cases, it is noteworthy that the medieval English common law made no explicit concession to drunken states or, for that matter, any explicit statement condemning crimes committed in a state of inebriation. This can be attributed to the fact that drunkenness, like anger, was treated as a vice that one might choose freely, and yet was also recognized, in extreme circumstances, as a state that might deprive a person of his or her capacity to reason. Rather than take a bright-line approach to alcohol intoxication, the common law left the issue to be sorted by judges and jurors. Given the resulting uncertainty, a man contemplating another drink at the tavern would have been wise to heed the summoner's advice to »drynk moore attemprely« lest he lose not only his »mynde and eek his lymes«,[132] but his very life at the gallows.

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